UNITED STATES DEPARTMENT OF COMMERCE
Unit d States Pat nt and Trad mark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/402,362	10/04/99	VALIX M	23999

IM52/0411

NATH & ASSOCIATES
1030 15TH STREET NW
6TH FLOOR
WASHINGTON DC 20005

EXAMINER	
MADSEN, R	
ART UNIT	**PAPER NUMBER**
1761	6

DATE MAILED: 04/11/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trad marks

Office Action Summary	Application No.	Applicant(s)	
	09/402,362	VALIX, MARJORIE GAN	
	Examiner	Art Unit	
	Robert Madsen	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *18 January 2001* .

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-17* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-17* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

13)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

15) ☒ Notice of References Cited (PTO-892)
16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) *2* .
18) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
19) ☐ Notice of Informal Patent Application (PTO-152)
20) ☐ Other: .

DETAILED ACTION

Acknowledgment is made of receipt of the Amendment filed January 18,2001. Claims 1-17 are currently pending in the application. In light of the amendment, the rejection of claim 14 under 35 USC 112 , 2nd paragraph is withdrawn.

Response to Arguments

Applicant's arguments with respect to claim 1 have been considered but are moot in view of the new ground(s) of rejection. Applicant argues that the Synosky reference does not teach a composition obtained from crude sugar cane wax. Now the amended claim 1 recites a food grade wax composition prepared from crude sugar cane wax comprising the particular components. However, the amended claim does not limit the particular components to sugar cane wax esters, sugar cane wax aldehydes, etc. and can be interpreted as being a composition derived from sugar cane wax with additional ingredients. See Claim Rejections - 35 USC § 103 below

Regarding claims 2-17, Applicant's arguments filed January 18, 2001 have been fully considered but they are not persuasive. The rejection under The rejection under 35 USC 103 of claims 2-17 in Paper No. 3 stands.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does

not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

In response to applicant's argument that the examiner has combined an excessive number of references, reliance on a large number of references in a rejection does not, without more, weigh against the obviousness of the claimed invention. See *In re Gorman*, 933 F.2d 982, 18 USPQ2d 1885 (Fed. Cir. 1991).

Regarding the reference '284A, the extraction is from inexpensive raw material, not an inexpensive process

Regarding the reference '289A not teaching a repeating step, '289A teach an additional Process II using a product obtained from a first process. Furthermore, repeating a purification step would have been an obvious result effective variable of the degree and quantity of purified material desired.

Regarding applicant's argument that the Whyte and Rieger patents do not teach food grade wax, they are relied on as evidence of particular step in refining wax. To design to particular refining step such that it is food grade would have been a obvious result effective variable of the intended use of the wax.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claim1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Synosky et al., Miguel- Colombel et al. (US 5882657), Lake (US 3931258)

Synosky et al. teach an insoluble portion of chewing gum comprising up to 30% wax (Column 5, lines 32-40), 5-95% elastomers that including polyvinyl alcohol (Column 4, line 64 to Column 5, line 4), 0.5 to 40% softeners which include mixtures of triglycerides and fatty acids (Column 5, lines 52-63). Synosky et al. further teach the soluble portion of the chewing gum comprises additional softeners of lecithin, or polar lipids (0.5 to 15.0%). Additional bulk sweeteners including sugar (reducing sugars are aldehydes) sugar alcohols may also be added to the total gum composition from 20 to 80% and additional flavoring agents, or flavor oils, may be added up to 10% of the total chewing gum composition (Column 6 lines 22-30, 35-45, and 60-63). Thus, Synosky teaches a range of a food grade wax composition (chewing gum) which comprises 6.2 to 11% wax esters, 0-3% tri-glycerides, 1.8 to 44.5% alcohols, and free fatty acids and polar lipids of 36.8 to 87.2%, and 2.8 to 9.5% flavoring oils. Although Synosky et al. is silent in teaching 2.8 to 9.5% aldehydes, Synosky et al. teach sugars may be used as sweeteners and reducing sugars are known aldehydes. Synosky also teaches flavors which are also known to comprise aldehydes.

Furthermore, Synosky et al. silent in teaching sugar cane wax, however, it is well known in the art that sugar cane wax is a food grade wax interchangeably with the same waxes taught by Synosky et al. (i.e. candelilla, carnuba, and beeswax).

For example, Miguel –Colombel et al. teach a food grade wax composition prepared from up to 8% wax (which may be sugar cane wax or candelilla, carnuba and beeswax) and oils (i.e. comprising tri-glycerides, fatty acids, lipids, alcohols) of up to 93.3%. Thus, Miguel-Colombel et al. teach the conventionality of using sugar cane wax in a food grade wax composition.

Lake is relied on as evidence of the conventional crude sugar cane wax composition of fatty acids, alcohols, esters, and aldehydes (Column 1 lines 1-13).

Therefore, to have any particular range of wax esters, aldehydes, triglycerides alcohols, free fatty acids, sterols, and lipids in a food grade wax composition made from crude sugar cane wax would have been an obvious result effective variable of the particular use of the wax composition such as a cosmetic or chewing gum and the particular blend ratio of sugar cane wax to other components.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Miyagi et al. (5002614) and Moerl et al. (DE004037476A1) teach a method of extracting sugar cane wax. Meyer et al. (5338564) teach a food grade wax composition.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Madsen whose telephone number is (703)305-0068. The examiner can normally be reached on 6:30AM-4:00PM, Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (703)308-3959. The fax phone numbers for the organization where this application or proceeding is assigned are (703)305-3599 for regular communications and (703)305-3599 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0661.

R. Madsen
April 9, 2001

MILTON CANO
PRIMARY EXAMINER
GAU 1761